

**IN THE COURT OF MS. DIVYA MALHOTRA:
ACMM-01: ROUSE AVENUE DISTRICT COURTS:
NEW DELHI.**

**CNR No.DLCT 12-0000-38-2024
Complaint Case No. 02/2024
U/s 200 Cr.P.C. r/w/s 174 IPC
Directorate of Enforcement vs. Arvind Kejriwal**

07.02.2024

ORDER

This is a complaint filed under Section 200 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C."). By way of this order, I shall decide whether there is sufficient material for taking cognizance of the offence under Section 174 of the Indian Penal Code, 1860 (in short "IPC") and grounds for proceeding against the proposed accused Mr. Arvind Kejriwal.

1. Briefly stated, complainant/Directorate of Enforcement (*in short "ED"*) is an investigating agency under the Department of Revenue, Ministry of Finance, Government of India. The present complaint has been filed through one Mr. Sandeep Kumar Sharma, Assistant Director in his official capacity. He at present is the Investigating Officer investigating the offence of money laundering under the Prevention of Money Laundering Act, 2002 (*in short the "PMLA" or the "Act"*) initiated by the ED *vide* ECIR/HIU-II/14/2022 dated 22.08.2022 on the basis of CBI FIR No. RC0032022A0053 dated 17.08.2022.

2. The pivot of the investigation is the Delhi Excise Policy, 2021-2022 floated by the Delhi Government. As per the complaint, the investigation carried out so far has revealed that

the said policy was formulated *as a part of a criminal conspiracy by the leaders of Aam Aadmi Party (hereinafter referred to as "AAP")* with deliberate loopholes to generate and channelize illegal funds unto themselves as well as to AAP. A prosecution Complaint was filed by the agency for the offence of money laundering before the concerned Ld. Special Court which, it is stated, took cognizance of the offence and summoned the accused persons. During the course of investigation, some arrests including that of several leaders of AAP were also made.

3. Now, to unearth the role of others, including that of the proposed accused, and to trace further proceeds of the crime, the Investigating Officer sought to examine the proposed accused for the purposes of investigation and summoned him in exercise of his powers under Section 50(2) of the Act. The proposed accused is the National Convenor as well as Member of the National Executive Committee of AAP.

It is the non-compliance of these summons(es) which forms the basis of the present complaint.

4. It is stated that in the matter of said ECIR (*supra*), a total of four summonses were issued upon the proposed accused to appear in person, the details whereof are as under :-

| Sl. No. | Date of communication | Subject | Service of Summon/ opportunity by ED | Date of compliance |
|---------|-----------------------|---|---|--------------------|
| (a) | (b) | (c) | (d) | (e) |
| 1. | 30.10.2023 | Summon dated 30.10.2023 issued to Sh. Arvind Kejriwal to appear | By mail to office e-mail ID of Sh. Arvind Kejriwal <cmdelhi@nic.in> | No compliance |

| | | | | |
|----|-------------------|--|---|---------------|
| | | on 02.11.2023. | | |
| 2. | 18.12.2023 | Summon dated 18.12.2023 issued to Sh. Arvind Kejriwal to appear on 21.12.2023. | By mail to office e-mail ID of Sh. Arvind Kejriwal <cmdelhi@nic.in> | No compliance |
| 3. | 22.12.2023 | Summon dated 22.12.2023 issued to Sh. Arvind Kejriwal to appear on 03.01.2024. | By mail to office e-mail id of Sh. Arvind Kejriwal <cmdelhi@nic.in> | No compliance |
| 4. | 12.01.2024 | Summon dated 12.01.2024 issued to Sh. Arvind Kejriwal to appear on 18.01.2024/ 19.01.2024. | By mail to office e-mail id of Sh. Arvind Kejriwal <cmdelhi@nic.in> | No compliance |

5. All the summons were duly served despite which the respondent/proposed accused did not appear. The summonses remained un-complied. Instead, replies were sent by the respondent/proposed accused to each of them wherein certain objections were raised and one or the other excuse was made for non-appearance. The summons were termed “*unsustainable in law*” *interalia* for their failure to disclose the capacity in which the respondent was being called - as a witness or as a suspect. Complainant has filed the copies of such replies alongwith the complaint and terming such objections as frivolous, it is orally submitted that under the scheme of PMLA, the investigating officer is not required to disclose the capacity under which a person is being summoned and that at the stage of investigation, it would otherwise also be premature on the part of the agency to label the summoned person either as a witness or as an accused.

6. Aggrieved by repeated omissions and failure to

appear in compliance of the summonses, the complainant has filed the present complaint. It is stated that the proposed accused has *intentionally omitted* to obey the summons and to attend at the place and time mentioned in the summons which intention is manifest from the objections and queries raised by him in his replies. It is said that the proposed accused has failed to join the investigation since 02.11.2023 which was the first date fixed for his appearance. Reliance is placed upon "***Bhambhia Noghanji and Others v State of Kutch***", 1954 SCC OnLine Kutch 12 to bring home the point that if attendance of a person summoned was made subject to queries, investigation would be indefinitely postponed and every person would avoid attendance by writing letters and at the same time maintain that the non-attendance was not willful. Reliance is also placed upon case titled "***Vijay Madanlal Choudhary & Ors. v Union of India & Ors.***", 2022 SCCOnline SC 929 in support of the case.

7. Thus, it is prayed that the proposed accused be summoned for the offence under **Section 174 IPC**. Although details of a total of four un-complied summonses have been mentioned, with each non-compliance termed as a separate offence, the subject complaint has been filed only with respect to the first three summonses *i.e.* dated **30.10.2023**, **18.12.2023** and **22.12.2023** (*supra*), in terms of Section 219 Cr.P.C. Further, the complaint being filed by a public servant in writing, exemption from examination of the complainant and his witnesses is requested to be dispensed with.

Heard. Perused.

8. The grievance of the complainant *vide* the present complaint, in a nutshell, is the non-compliance of the summonses issued by the Investigating Officer in exercise of his powers under Section 50(2) of the Act. The complainant is investigating the matter registered *vide* **ECIR/HIU-II/14/2022** dated 22.08.2022 revolving around the Delhi Excise Policy 2021-2022. In pursuance of such investigation, a total of four summonses were issued, the details whereof have already been mentioned above (*see Table at para no. 4*). However, we are only concerned with the first three summons dated **30.10.2023**, **18.12.2023** and **22.12.2023** (*in short the “summons in question”*), which form the subject matter of the present complaint.

9. The summons in question have been issued in respect of an ongoing investigation under the PMLA and to carry out the purposes of the Act, certain “authorities” have been created therein, Assistant Director being one of them. Under Section 50 of the Act, these authorities *inter alia* have power to summon *any person* during investigation whose attendance may be considered necessary for giving evidence or to produce record. For ready reference, **Section 50(2) & (3) of the Act** is reproduced herein below:-

“50. Powers of authorities regarding summons, production of documents and to give evidence, etc :-

(1)

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to

produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.....”

Thus, the persons summoned by the authorities mentioned above, are bound to comply with such summons by virtue of Section 50(3) of the Act.

10. Further, **Section 174 of IPC** makes non-attendance in obedience to an order from a public servant a punishable offence. It states as under :

“174. Non-attendance in obedience to an order from public servant- Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may

extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.” (emphasis supplied)

11. The copies of the summons in question *i.e.* dated **30.10.2023** requiring attendance of the respondent (*proposed accused*) on 02.11.2023; dated **18.12.2023** requiring his attendance on 21.12.2023 and dated **22.12.2023** requiring his attendance on 03.01.2024 “*to give evidence in connection with the investigation or proceedings under PMLA*” in **ECIR/HIU-II/14/2022** issued by the then Investigating Officer Mr. Jogender, Assistant Director, ED have been filed along with the complaint. His authority to issue such summonses flows from Section 50(2) of the Act. The summonses have been addressed to the respondent/proposed accused at his official e-mail address. The delivery of such summonses is *prima facie* evidenced from the fact that the proposed accused sent replies to them *vide* letters/replies dated 02.11.2023; 20.12.2023 and 03.01.2024 respectively wherein *interalia* reasons for non-appearance were set out. By virtue of Section 50(3) of the Act, the respondent of the summonses *i.e.* the proposed accused was *legally* bound to attend in person in pursuance of the same but purportedly he failed to do so.

12. It is trite that at the stage of cognizance and in determining whether process needs to be issued, a Magistrate has to be satisfied only if the ingredients of the alleged offence are made out and if there are sufficient grounds for proceeding and not if there are sufficient grounds for conviction. In view of the discussion held above, the complaint filed by the complainant accompanied by the supporting documents discloses all the necessary ingredients constituting the offence punishable under Section 174 of IPC. Section 63(4) of PMLA enables prosecution under Section 174 of IPC for disobedience of any direction under Section 50 of the Act. The complaint has been filed by the Assistant Director in discharge of his official duties and has been filed within limitation. The Assistant Director is a public servant within the meaning of Section 21 of IPC by virtue of Section 40 of the Act. Thus, in view of proviso (a) of Section 200 Cr.P.C. and as the complaint has been made in writing, the examination of the complainant and his witness(es) stands dispensed with.

Conclusion:

13. To sum up, from the contents of the complaint and the material placed on record, ***prima facie* offence under Section 174 of the Indian Penal Code, 1860 is made out and there are sufficient grounds for proceeding under Section 204 of the Code of Criminal Procedure, 1973 against accused Mr. Arvind Kejriwal.**

Copy of the complaint is already on record.

Accordingly, issue summons to accused Mr. Arvind Kejriwal for the offence under Section 174 of the Indian Penal Code, 1860 for 17.02.2024.

Announced in the open Court today on 07th day of February, 2024.

DIVYA

MALHOTRA

Digitally signed by
DIVYA MALHOTRA
Date: 2024.02.07
17:30:24 +05'30'

(Divya Malhotra)

ACMM-01/RADC/New Delhi

07.02.2024